

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**ALMONTE BEACH FOOD CORP. d/b/a
ASSOCIATED SUPERMARKET**

and

Case No. 29-CA-29830

**LOCAL 338, RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION/ UNITED
FOOD AND COMMERCIAL WORKERS**

Henry Powell, Esq., Counsel for the General Counsel.

Elise Feldman, Esq., Friedman & Wolf. Counsel for the Charging Party.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on January 21, 2010 in Brooklyn, New York. The Complaint herein, which issued on December 21, 2009¹ and was based upon an unfair labor practice charge that was filed on September 18 by Local 338, Retail, Wholesale and Department Store Union/ United Food and Commercial Workers, herein called the Union, alleges that Almonte Beach Food Corp., d/b/a Associated Supermarket, herein called the Respondent, refused to allow a business representative of the Union to visit its facility to investigate compliance with the contract between the Respondent and the Union, as provided for in that contract, in violation of Section 8(a)(1)(5) of the Act. The Complaint further states that pursuant to the Board's Rules and Regulations, the Respondent's Answer must be received by the Board's regional office on or before January 4, 2010. The Respondent failed to file an Answer by that date. The regional office sent Respondent a letter by certified and by regular mail reminding the Respondent that it was required to file an Answer to the Complaint and giving the Respondent until January 13, 2010 to file an Answer. No Answer was received and the Respondent did not appear at the hearing herein. Counsel for the General Counsel, at the hearing, moved for default judgment, which motion I granted. Based upon the Complaint herein, I make the following findings of fact and conclusions of law:

1. The charge herein was filed by the Union on September 18, and served by regular mail upon Respondent on or about September 28.

2. At all material times, Respondent, a domestic corporation with its principal office and place of business at 663 East Park Avenue, Long Beach, New York, herein called its Long Beach facility, has been engaged in the retail sale of foodstuff and related commodities.

3(a). During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations described above in paragraph 2, derived gross annual revenues at its Long Beach facility valued in excess of \$500,000.

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2009.

3(b). Also during the past year, Respondent purchased and received at its Long Beach facility goods, supplies and materials valued in excess of \$5,000 directly from entities located within the State of New York who, in turn, received those goods, supplies and materials from entities located outside the State of New York.

4. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All present and future full-time and part-time employees (other than store managers, butchers and meat wrappers) employed in all departments at the Employer's Long Beach facility.

7. At all material times, the Union has been the designated exclusive collective bargaining representative of the Unit. This recognition has been embodied in successive collective bargaining agreements, the most recent of which was effective from November 12, 2003 through November 4, 2006, and which agreement's expiration date was extended by mutual agreement of the parties to January 13, 2007.

8. At all times, since at least 2003, based upon Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

9. Article 14 of the most recent collective bargaining agreement between Respondent and the Union states that: "The business agent or any authorized representative of the Union may visit the stores of the Employer at any time."

10. At all material times, Annabelle Rodriguez has been a supervisor of Respondent within the meaning of Section 2(11) of the Act, and/or an agent of the Respondent acting on its behalf.

11(a). On August 28, Union business representatives, pursuant to Article 14 of the collective bargaining agreement described above in paragraph 9, visited Respondent's facility to investigate Respondent's compliance with the most recent collective bargaining agreement described above in paragraph 7.

11(b). On August 28, Respondent, by Annabelle Rodriguez, in the presence of employees, ordered the business representatives referred to above in subparagraph (a), to leave the Long Beach facility.

11(c). On August 28, pursuant to a request by the Respondent, police ejected the business representatives referred to above in subparagraphs (a) and (b) from the Long Beach facility.

12. By the conduct described above in paragraph 11, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of

the Act, in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraph 11, Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the Unit, and thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities, and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In this regard, I recommend that a supervisor or agent of the Respondent be ordered to write a letter (or e-mail) to the Union acknowledging that it was in error in not allowing the Union representatives on its premises on August 28, and that, in the future, such representatives will be allowed on the premises without restrictions.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:

ORDER²

The Respondent, Almonte Beach Food Corp., d/b/a Associated Supermarket, its officers, agents and representatives, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by ordering the Union's business representatives to leave its facility, and by obtaining the assistance of the police in forcing them to leave.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Notify the Union within 10 days of the receipt of this Decision, in writing, that it has no objection to its business representatives visiting the store to police the terms of its collective bargaining agreement with the Union.

(b) Within 14 days after service by the Region, post at its store in Long Beach, New

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

York, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.

5 Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since
10 August 28, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

15 **Dated, Washington, D.C., February 9, 2010.**

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Joel P. Biblowitz
Administrative Law Judge

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3 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the
50 National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain in good faith with Local 338, Retail, Wholesale and Department Store Union/ United Food and Commercial Workers ("the Union") by ordering the Union's representatives to leave our facility, or by obtaining the assistance of the police in forcing them to leave.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL notify the Union, in writing, that we have no objection to its representatives visiting the store in order to police the terms of our contract with the Union.

ALMONTE BEACH FOOD CORP., d/b/a ASSOCIATED SUPERMARKET

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.